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ABSTRACT

This document lists the provisions of the Washington state statute which prohibits sex discrimination in: public schools, employment, counseling and guidance services to students, recreational and athletic activities for students, access to course offerings, and in textbooks and instructional materials used by students. All school districts in Washington are directed by the legislation to develop affirmative action programs. Responsibility for enforcement resides with the Superintendent of Public Instruction. Penalties for noncompliance may include the termination of all state apportionment to the offending school district. (Author/AM)

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Chapter 392-190

EQUAL EDUC. OPPOR.--SEX DISCRIMINATION PROHIBITED - CH 392-190

WAC

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WAC 392-190-005 PURPOSE--ELIMINATION OF SEX DISCRIMINATION. The purpose of this chapter is to establish rules and regulations which implement chapter 28A.85 RCW. The referenced enactment prohibits discrimination on the basis of sex in regulations implementing Title IX of the Education Amendments assisted education programs or activities. As a result, several substantive areas have been similarly identified and addressed by both state and federal enactments.

It is the intent of this chapter to encompass those similar substantive areas addressed by the Title IX regulations and in some aspects extend beyond the Title IX regulations. Accordingly, compliance with this chapter should constitute compliance with those similar substantive areas treated in the Title IX regulations, but school districts should be aware that compliance with the Title IX regulations alone may not constitute compliance with this chapter.

Although chapter 28A.85 RCW and the balance of this chapter prohibit sex discrimination in grades K-12 only, the Superintendent of Public Instruction hereby declares pursuant to the authority vested in the Superintendent by Article 3, section 22 of the State Constitution that it shall be unlawful for any public school district to discriminate on the basis of sex with regard to any activity conducted by or in behalf of a school district including, but not limited to, preschool, adult education, community education and vocational-technical program activities.

WAC 392-190-010 COUNSELING AND GUIDANCE SERVICES--CAREER OPPORTUNITIES--INTERNAL PROCEDURES. (1) No school district shall engage in discrimination against any person on the bases of sex in the counseling or guidance of students in grades K-12.

(2) Each school district shall devise and use materials, orientation programs and counseling techniques that will encourage participation in all school programs and courses of study based on factors other than sex and that encourage students to explore subjects and activities not heretofore traditional for their sex.

(3) Each school district which uses testing and other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless (a) such different materials cover the same occupations and interest areas and (b) the use of such different materials is demonstrated to be essential to eliminate sex bias.

(4) Each school district shall develop and use internal procedures for ensuring that all tests and appraisal instruments, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement do not discriminate on the basis of sex: PROVIDED, That where the use of such instruments or materials or such programs or activities results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the school district shall take such immediate action as is necessary to assure itself that such disproportion is not the result of discrimination in the program or activity or in the instrument or material or its application:

PROVIDED FURTHER, That where a school district finds that a particular class contains a substantially disproportionate number of individuals of one sex, the district shall take such immediate action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in tests and appraisal instruments, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement or by counselors.

(5) Each school district shall comply fully with the requirements of this section no later than July 1, 1976.

WAC 392-190-015 COUNSELING AND GUIDANCE--DUTY OF CERTIFICATED AND CLASSROOM PERSONNEL--COORDINATION OF EFFORT. (1) All certificated and classroom personnel shall encourage students to explore and develop their individual interests in career and vocational technical programs and employment opportunities without regard to sex, including reasonable efforts encouraging students to consider and explore "non-traditional occupations for men and women: PROVIDED, That all certificated and classroom personnel within each local school district shall have access to an Educational Staff Associate (ESA) certificated school counselor(s) or such other appropriate person(s), designated by the school district superintendent to coordinate compliance with the requirements of this section.

(2) All certificated and classroom personnel shall comply fully and immediately with the requirements of this section. The superintendent of each school district shall make the designation(s) required by this section immediately.

WAC 392-190-020 INSERVICE TRAINING--SEX BIAS AWARENESS. Each school district should include sex bias awareness and sex bias elimination training sessions in such inservice training programs as are conducted or provided for certificated and/or classroom personnel.

WAC 392-190-025 RECREATIONAL AND ATHLETIC ACTIVITIES--EQUAL OPPORTUNITY--SEPARATE TEAMS. (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, club or intramural athletics or recreational activity offered by a school district and no school district shall provide any such athletics or recreational activity separately on such basis. Sports teams and programs offered by a school district shall, regardless of their nature, be equally open to participation by qualified members of both sexes: PROVIDED, That in the case of sports and recreational activities offered for students in grades 7 through 12, a school district may maintain separate teams for members of each sex if (a) it can clearly be shown,

under the factual circumstances involved in the particular case, that the maintenance of separate teams for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in the sports or games of their choice and (b) at the same time, a test of substantial equality between the two programs can be found to have been met.

(2) For the purpose of this section and WAC 392-190-050(2) "substantial equality" shall be determined by considering factors including but not limited to the following:

(a) the relationship between the skill and compensation of coaching staffs;

(b) the size of their budgets;

(c) the quality of competition and game schedules;

(d) uniforms;

(e) equipment and facilities; and

(f) sufficient numbers of participants to warrant separate teams.

WAC 392-190-030 GENERAL--RECREATIONAL AND ATHLETIC ACTIVITIES--EQUAL OPPORTUNITY FACTORS CONSIDERED. Each school district shall evaluate its recreational and athletic program at least once each year to ensure that equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics which are operated, sponsored, or otherwise provided by the school district.

In determining whether equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics, each school district conducting an evaluation required by this section, and the office of Superintendent of Public Instruction upon receipt of a complaint pursuant to WAC 392-190-075, shall consider several factors, including but not limited to the following where provided by a school district:

(1) whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes;

(2) the provision of equipment and supplies;

(3) the scheduling of games and practice times including the use of playfields, courts, gyms, and pools;

(4) transportation and per diem allowances, if any;

(5) the opportunity to receive coaching and academic tutoring;

(6) the assignment and compensation of coaches, tutors, and game officials;

(7) the provision of medical and training facilities and services including the availability of insurance;

(8) the provision of housing, laundry, and dining facilities and services, if any; and

(9) publicity and awards.

Unequal aggregate expenditures within a school district for members of each sex or unequal expenditures for separate male and female teams will not alone constitute noncompliance with this chapter, but the failure to provide the necessary funds for recreational and athletic activities for members of one sex may be considered in assessing the equality of opportunity for members of each sex.

WAC 392-190-035 RECREATIONAL AND ATHLETIC ACTIVITIES--COMPLIANCE TIMETABLE--ELEMENTARY AND SECONDARY LEVEL. (1) Each school district which operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the elementary school level (K-6) shall provide equal opportunity and encouragement for physical and skill development to all students in the elementary grades consistent with this chapter as expeditiously as possible but in no event later than July 21, 1976.

(2) Each school district which operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the secondary school level (7-12) shall provide equal opportunity and encouragement for physical and skill development to all students in the secondary grades consistent with this chapter as expeditiously as possible but in no event later than July 21, 1978.

WAC 392-190-040 RECREATIONAL AND ATHLETIC ACTIVITIES--STUDENT INTEREST--REQUIRED SURVEY INSTRUMENT. (1) The Superintendent of Public Instruction shall develop a survey instrument to assist each school district in the determination of student interest for male/female participation in specific sports.

(2) A survey instrument shall be administered by each school district at all grade levels where interscholastic, intramural and other sports and recreational activities are conducted as expeditiously as possible, but in no event later than the 1975-76 school year. The results of the survey shall be considered in the program planning and development in the area of recreational and athletic activities offered within the school district.

(3) A survey instrument developed pursuant to this section shall be administered during the 1975-76 and 1976-77 school years and at least once every three years thereafter within each school district. PROVIDED, That the content of the survey instrument may be modified or amended as deemed appropriate to clarify and assist in the evaluation of student interest.

WAC 392-190-045 RECREATIONAL AND ATHLETIC ACTIVITIES--FACILITIES. A school district which provides athletic facilities for members of one sex including showers, toilets, and training room facilities for athletic purposes shall provide comparable facilities for members of the opposite sex no later than July 1, 1976: PROVIDED, That such facilities may be provided as either separate facilities or shall be scheduled and used separately by members of each sex: PROVIDED FURTHER, That this section shall not be interpreted to require the construction of additional facilities.

WAC 392-190-050 COURSE OFFERINGS--GENERALLY--SEPARATE SESSIONS OR GROUPS PERMISSIBLE. No school district shall provide any course or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including but not limited to health, physical education, industrial arts, business, vocational-technical, and home economics courses: PROVIDED, That this section shall not be construed to prohibit:

(1) the grouping of students in physical education classes and activities by demonstrated ability as assessed by objective standards of individual performance developed and applied without regard to sex: PROVIDED, That where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the school district shall immediately implement appropriate standards which do not have such effect;

(2) the separation of students by sex within physical education classes or activities offered for students in grades 7 through 12 if (a) it can clearly be shown under the factual circumstances involved in the particular case, that the maintenance of a separate physical education class or activity for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in such class or activity and (b) at the same time a test of substantial equality between the two classes or activities can be found to have been met;

(3) the conduct of separate sessions for boys and girls with respect to those portions of classes which deal exclusively with human sexuality; and

(4) the conduct of classes and/or activities within which a school district may establish or maintain requirements based on vocal range or quality which may result in a chorus or choruses of one sex or predominantly one sex.

Each school district that provides physical education classes and activities at the elementary school level (K-6) shall comply fully with this section as expeditiously as possible but in no event later than July 21, 1976. Each school district that provides physical education classes and activities at the secondary school level (7-12) shall comply fully with this section as expeditiously as possible but in no event later than July 21, 1978.

WAC 392-190-055 TEXTBOOKS AND INSTRUCTIONAL MATERIALS--SCOPE--ELIMINATION OF SEX BIAS--COMPLIANCE TIMETABLE. (1) It is the intent of this section to eliminate sex bias in connection with any form of instruction provided by a school district.

(2) The instructional materials policy of each school district required by RCW 28A.58.103 shall incorporate therein, as part of the selection criteria, a specific statement requiring the elimination of sex bias in all textbooks and instructional materials including reference materials and audio-visual materials.

(3) The instructional materials committee of each school district shall establish and maintain appropriate screening criteria designed to identify and eliminate sex bias in all textbooks and instructional

materials including reference materials and audio-visual materials: PROVIDED, That such selection criteria shall be consistent with the selection criteria endorsed by the state board of education dated December 6, 1974, WAC 180-48-010, as now or hereafter amended, and WAC 180-46-005 through WAC 180-46-060, as now or hereafter amended. One of the aids to identification of sex bias in instructional materials consists of the Washington Models for the Evaluation of Bias Content in Instructional Materials published by the Superintendent of Public Instruction.

(4) In recognition of the fact that current instructional materials which contain sex bias may not be replaced immediately, each school district should acquire supplemental instructional materials or aids to be used concurrent with existing materials for the purpose of countering the sex bias content thereof.

(5) Each school district shall comply fully with this section with respect to all textbooks and instructional materials including reference materials and audio-visual materials ordered after July 1, 1976. The screening criteria required by this section shall be adopted with the approval of the school district board of directors no later than July 1, 1976.

(6) Nothing in this section is intended to prohibit the use or assignment of supplemental instructional materials such as classic and concontemporary literary works, periodicals and technical journals which, although they contain sex bias, are educationally necessary or advisable.

WAC 392-190-060 COMPLIANCE--LOCAL SCHOOL DISTRICT--DESIGNATION OF RESPONSIBLE EMPLOYEE--NOTIFICATION. (1) The superintendent of each school district shall immediately designate at least one employee who shall be responsible directly to the superintendent for monitoring and coordinating the district's compliance with this chapter. The employee designated pursuant to this section shall also be charged with the responsibility to investigate any complaint(s) communicated to the school district pursuant to WAC 392-190-065.

(2) Each school district shall, once each year or more often as deemed necessary, publish notice in a manner which is reasonably calculated to inform all students, students' parents, and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this section and the appeal procedure set forth in WAC 392-190-065, WAC 392-190-070 and WAC 392-190-075 as now or hereafter amended.

WAC 392-190-065 COMPLIANCE--COMPLAINT PROCEDURE--DISTRICT SUPERINTENDENT. (1) Upon receipt of a complaint by a school district in the manner herein described, the employee or employees designated pursuant to WAC 392-190-060 shall investigate the allegations set forth and shall institute such other reasonable procedures to effect a prompt resolution of the complaint: PROVIDED, That each complaint communicated to the school district shall be (a) written, (b) signed by the

complaining party, and (c) set forth specific acts, conditions, or circumstances alleged to be violative of this chapter or the specific acts, conditions, or circumstances that would be prohibited by this chapter.

(2) Upon completion of the investigation required by this section in connection with a complaint communicated to the school district, the designated employee or employees shall provide the district superintendent with a full written report of the complaint and the results of the investigation. The district superintendent shall respond in writing to the complaining party as expeditiously as possible but in no event later than thirty (30) calendar days following receipt of such complaint by the school district.

(3) The response of the school district superintendent required by this section shall clearly state either (a) that the school district denies the allegations contained in the complaint received pursuant to this section, or (b) the nature of such reasonable corrective measures deemed necessary to eliminate any such act, condition, or circumstance within the school district: PROVIDED, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty (30) calendar days following the school district superintendent's mailing of a written response to the complaining party required by this section.

(4) The complaint procedure required by this section shall not prohibit the processing of grievances by an employee bargaining representative and/or a member of a bargaining unit pursuant to grievance procedures established at the school district level by local bargaining agreement.

WAC 392-190-070 COMPLIANCE--APPEAL PROCEDURE--LOCAL SCHOOL BOARD. (1) In the event a complainant remains aggrieved as a result of the action or inaction of the superintendent in resolving a complaint as provided in WAC 392-190-065, said complainant may appeal to the school district board of directors by filing a written notice of appeal with the secretary of the school board on or before the tenth day following (a) the date upon which the complainant received the superintendent's response or (b) the expiration of the thirty (30) day response period provided by WAC 392-190-065, whichever occurs first.

(2) An appeal to the board of directors pursuant to this section shall require the board of directors to schedule a hearing to commence on or before the twentieth day following the filing of the written notice of appeal. Both parties shall be allowed to present such witnesses and testimony as the board deems relevant and material. The board of directors shall render a written decision on or before the tenth day following the termination of the hearing, and shall provide a copy to all parties involved.

WAC 392-190-075 COMPLIANCE--CONTESTED CASE--DUTY OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION. (1) In the event a complainant remains aggrieved with the decision of a school district board of directors

rendered pursuant to WAC 392-190-070, the complainant may appeal the board's decision to the Superintendent of Public Instruction. Upon the receipt of a notice of appeal filed in compliance with this section, the Superintendent of Public Instruction shall schedule a hearing to commence on or before the fortieth day thereafter.

(2) A notice of appeal must be received by the Superintendent on or before the tenth day following the date upon which the complainant received written notice of the school board's decision. Furthermore, the notice must be in writing and must set forth (a) a concise statement of the portion or portions of the school board's decision which is appealed from, and (b) the relief requested by the complainant/appellant.

(3) Appeals to the Superintendent shall be conducted dehovo pursuant to the state administrative procedure act (chapter 34.04 RCW). The complainant/appellant shall have the responsibility for prosecuting his or her case and the school district/respondent shall have the duty of defending the decision or portion thereof appealed from.

WAC 392-190-080 COMPLIANCE--VIOLATIONS--PERMISSIBLE SANCTIONS. In the event a school district is found to be in violation of the requirements of this chapter, the Superintendent of Public Instruction may, by appropriate order pursuant to chapter 34.04 RCW, impose an appropriate sanction or institute appropriate corrective measures, including but not limited to (a) the termination of all or part of state apportionment or categorical moneys to the offending school district, (b) the termination of specified programs wherein such violation or violations are found to be flagrant in nature, (c) the institution of a mandatory affirmative action program within the offending school district, and (d) the placement of the offending school district on probation with appropriate sanctions until such time as compliance is achieved or is assured, whichever is deemed appropriate in the particular case by the Superintendnet of Public Instruction.

Chapter 392-200

PUB. SCH. EMPLOYMENT DISCRIMINATION PROHIBITED - CH. 392-200

WAC

392-200-005	Purpose--Authority.
392-200-010	Public school employment and contract practices--Sex discrimination.
392-200-015	Public school employment--Affirmative action program.
392-200-020	Public school employment--Affirmative action program--General.

WAC 392-200-005 PURPOSE--AUTHORITY. It is the purpose of this chapter to require each public school district to establish and implement affirmative action employment policies and programs to eliminate discrimination on the basis of sex, race, creed, color, national origin, marital status, age or the presence of any sensory, mental, or physical handicap. The authority for the rules contained herein is founded upon chapter 28A.85 RCW and Article 3, section 22 of the Washington State Constitution.

WAC 392-200-010 PUBLIC SCHOOL EMPLOYMENT AND CONTRACT PRACTICES--SEX DISCRIMINATION. (1) No school district shall, on the basis of sex, exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination in employment, recruitment, promotion or advancement, consideration or selection therefor, whether full time or part time, in connection with employment by a school district.

(2) Each school district shall make all employment decisions in a nondiscriminatory manner and shall not limit, segregate, or classify any person in any way which could adversely affect a person's employment opportunities or status on the basis of sex.

(3) No school district shall enter into any contractual or other relationship that directly or indirectly has the effect of subjecting any person to discrimination in connection with employment on the basis of sex, including but not limited to relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees.

(4) No school district shall grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex.

WAC 392-200-015 PUBLIC SCHOOL EMPLOYMENT--AFFIRMATIVE ACTION PROGRAM. (1) Each school district shall develop and/or incorporate within any existing affirmative action employment program appropriate provisions which are consistent with the intent of chapter 28A.85 RCW and such guidelines as are hereafter developed and distributed to each school district by the office of Superintendent of Public Instruction to eliminate discrimination on the basis of sex, in connection with employment by the school district: PROVIDED, That each school district's affirmative action employment program shall include at least the following provisions respecting discrimination on the basis of sex.

(a) maintain credential requirements for all personnel;

(b) make no differentiation in pay scale;

(c) make no differentiation in the assignment of school duties except where such assignment would involve duty in areas

or situations, such as but not limited to a shower room, where persons might be disrobed;

(d) provide the same opportunities for advancement;

(e) make no difference in conditions of employment including, but not limited to, hiring practices, leaves of absence, hours of employment and assignment of, or pay for, instructional and non-instructional duties; and

(f) such other provisions as may be required by the Superintendent of Public Instruction designed to facilitate the effective achievement of all reasonable affirmative action goals and objectives in public school employment respecting the elimination of discrimination on the basis of sex.

(2) Each affirmative action employment program of a school district shall be filed with the office of the Superintendent of Public Instruction.

(3) The board of directors of each school district shall adopt and implement an approved affirmative action employment program required by this section as expeditously as possible but in no event later than July 1, 1976.

WAC 392-200-020 PUBLIC SCHOOL EMPLOYMENT—AFFIRMATIVE ACTION PROGRAM—GENERAL. (1) Notwithstanding the requirements of this chapter respecting discrimination on the basis of sex, each school district shall develop and/or incorporate within provisions to eliminate discrimination on the basis of race, creed, color, national origin, marital status, age or the presence of any sensory, mental, or physical handicap.

(2) Each affirmative action employment program of a school district shall be filed with the office of the Superintendent of Public Instruction.

(3) The board of directors of each school district shall adopt and implement an approved affirmative action employment program required by this section as expeditiously as possible but in no event later than July 1, 1976.